

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 05-0026
Individual Adjusted Gross Income Tax
For 1999 and 2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sufficiency of Information Used to Determine State Income Tax Assessments.

Authority: IC 6-8.1-5-1(a); IC 6-8.1-5-1(b).

Taxpayer maintains that the assessment of state income taxes is based upon unverified information obtained from the Internal Revenue Service.

II. Absence of OMB Numbers.

Authority: 44 U.S.C.S. § 3502(11); 44 U.S.C.S. § 3507(f); 44 U.S.C.S. § 3512; 44 U.S.C.S. §§ 3501-3520; United States v. Holden, 963 F.2d 1114 (8th Cir. 1992).

Taxpayer states that because the directions for federal income tax forms lack an OMB number, the federal income tax assessments – along with the consequent state tax assessments – are invalid.

III. Tax Records.

Authority: I.R.C. § 6001; I.R.C. § 6011(a); Treas. Reg. § 1.6001-1(a).

Taxpayer argues that because the Secretary of the Treasury never notified him that he was required to maintain federal tax records, the federal tax assessments – along with state tax assessments for the same years – are invalid.

IV. Liability for State Income Taxes.

Authority: Schiff v. United States, 919 F.2d 830 (2nd Cir. 1990); 28 Ind. Reg. 1958.

Taxpayer claims that nothing in either state or federal law renders him “liable” for federal or state income taxes.

STATEMENT OF FACTS

Taxpayer is an Indiana resident. The Department of Revenue (Department) received information from the Internal Revenue Service indicating that taxpayer had obtained unreported income. The

IRS information was used in calculating taxpayer's state income tax liability. The Department then sent taxpayer notices of "Proposed Assessment." Taxpayer objected to the assessments and sent the Department a series of letters in which he requested additional information. The Department responded by forwarding what it regarded as the appropriate information. Taxpayer determined that the Department's response was inadequate and continued his initial objections. The matter was treated as a protest, was assigned to a Hearing Officer, and an administrative hearing was conducted. Taxpayer restated his objections during the hearing, and this Letter of Findings results.

DISCUSSION

I. Sufficiency of Information Used to Determine State Income Tax Assessments.

Taxpayer argues that the information upon which the Department relied was insufficient and unverified.

The Department based the proposed assessments upon information obtained from the IRS. The IRS shared the information with the Department after the IRS concluded that taxpayer failed to file federal returns for 1999 and 2000 but had nonetheless received taxable income during those years. The information provided by the IRS was gathered after it conducted an audit on February 13, 2004.

Indiana law provides as follows: "If the department reasonably believes that a person has not reported the proper amount of tax due, the department *shall* make a proposed assessment of the amount of the unpaid tax due on the basis of the best information available to the department." IC 6-8.1-5-1(a) (*Emphasis added*).

In taxpayer's case, the Department believed that the "best information available" consisted of the information obtained from the IRS after the IRS audited taxpayer. After obtaining that information, the Department fulfilled its legal responsibility to make a "proposed assessment."

Nonetheless, taxpayer claims that the information obtained from the IRS is both unverified and unreliable. Specifically, taxpayer claims that both Indiana's proposed assessment and the original IRS information are unsigned and lack supporting documentation.

However, it is not the Department's responsibility to bolster the credibility or accuracy of the information obtained from the IRS. The Department found that the IRS information was the "best information available" at the time the proposed state income tax assessments were issued. There is nothing on the face of the IRS information which would raise a question as to either the legitimacy or accuracy of that information. Having received that information, the Department was bound by statute to issue the proposed assessments for 1999 and 2000 state taxes.

Taxpayer has provided the Department nothing which would cause the Department to question the IRS information. Taxpayer's generalized objections, that the information is unreliable and unverified, do nothing which strike to the heart of the matter. Were the proposed assessments correct? Did the IRS err in calculating taxpayer's adjusted gross income? Did the Department overlook a deduction or exemption to which taxpayer was entitled? Did someone in the IRS or the Department make a clerical error? Taxpayer has not raised these or any similar objections.

Indiana law provides that, “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is wrong.” IC 6-8.1-5-1(b). Metaphorically speaking, once a proposed assessment is made, the ball is in the taxpayer’s court; it is up to the taxpayer to provide something to challenge the proposed assessment. In this case, taxpayer has done nothing which would lead the Department to believe that the proposed assessments of state income tax were somehow erroneous.

FINDING

Taxpayer’s protest is denied.

II. Absence of OMB Numbers.

Taxpayer claims that the proposed state income tax assessments are invalid because directions for the federal tax forms – upon which state assessments were based – did not contain OMB numbers.

Taxpayer’s argument is apparently based on the fact that the regulations and directions accompanying the federal tax forms do not have an OMB number.

Under the Paperwork Reduction Act of 1980 (1980 Act), 44 U.S.C.S. §§ 3501-3520, any information collection request from a federal agency must display a control number issued by the Director of the Office of Management and Budget (OMB). 44 U.S.C.S. § 3507(f). If an agency's information collection request does not display the OMB control number assigned by the Director, no person can be penalized for failing to provide the requested information. 44 U.S.C.S. § 3512. The 1980 Act defines an information collection request as a written report form, application form, schedule, questionnaire, reporting or recordkeeping requirement, collection of information requirement, or other similar method calling for the collection of information. 44 U.S.C.S. § 3502(11). Although tax forms fall within the Act's definition of information collection requests, tax instruction booklets do not. Because tax instruction booklets simply assist a taxpayer in completing tax forms and ensure compliance with the information collection requests, booklets are not required to display an OMB number. As long as the 1040 form complies with the Act, nothing more is required. *See United States v. Holden*, 963 F.2d 1114 (8th Cir. 1992).

Taxpayer’s challenge to the proposed assessments of state income tax – based on the fact that the federal printed instructions lack an OMB number – is not well founded.

FINDING

Taxpayer’s protest is denied.

III. Tax Records.

According to taxpayer, I.R.C. §§ 6001, 6011 require that the United States Secretary of Treasury personally notify taxpayer of the taxpayer’s obligation to maintain tax records. Taxpayer concludes that because the Secretary of Treasury did not notify taxpayer he was required to keep those records, the federal assessment – and the related state tax assessments – are invalid.

I.R.C. § 6001 states in part as follows:

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person *or by regulations*, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. (*Emphasis added*).

I.R.C. § 6011(a) states, as a general rule, as follows:

When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

Taxpayer reads I.R.C. §§ 6001, 6011 as requiring that the Secretary of the Treasury notify taxpayer of any obligation to maintain financial records. Although the Secretary may not have personally notified taxpayer of taxpayer's obligation to maintain adequate records, the IRS – acting under authority promulgated by the Department of the Treasury – has issued a regulation requiring all taxpayers to keep accurate, permanent books and records in order to be able to determine the various types of income, gains, losses, costs, and any other amounts that affect taxpayers' income tax liability for each year. Treas. Reg. § 1.6001-1(a).

FINDING

Taxpayer's protest is denied.

IV. Liability for State Income Taxes.

Taxpayer maintains that nothing in either federal or state law makes him "liable" for federal or state income taxes. Taxpayer's semantic argument has been previously addressed by the Department in Letter of Findings 01-20040265 issued December 23, 2004 (28 Ind. Reg. 1958). *See also Schiff v. United States*, 919 F.2d 830, 834 (2nd Cir. 1990). This argument is without substance and will not be readdressed here.

FINDING

Taxpayer's protest is denied.